



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/044,711	10/24/2001	Clark Leonard Breyman	INXT 1018-1	1269

22470 7590 08/23/2005

HAYNES BEFFEL & WOLFELD LLP
P O BOX 366
HALF MOON BAY, CA 94019

EXAMINER

FERNANDES, CHERYL M

ART UNIT	PAPER NUMBER
----------	--------------

2163

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/044,711	Applicant(s) BREYMAN ET AL.	
	Examiner Cheryl M. Fernandes	Art Unit 2163	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

TL

DETAILED ACTION

1. This communication is in response to Amendment filed June 15, 2005. Claims 1-34 are pending. Claims 1, 11-22, 23, 25, and 28-34 are amended.

Response to Arguments

2. Applicant's arguments with respect to claims 1-34 have been considered but are moot in view of the new ground(s) of rejection.

3. Referring to the objection to the drawings, in particular, Fig. 5A-5B, Applicant's arguments were not found persuasive and do not overcome the prior objections to the drawings. As such, the objections to the drawings are maintained.

4. Referring to the objections to the specification, Applicant's amendments are acknowledged. As such, the objections to the specification are withdrawn.

5. Referring to the objections to the claims, Applicant's amendments are acknowledged. As such, the objections to the claims are withdrawn.

6. Referring to the 35 USC 112 second paragraph rejections of claim 1-21 and 23-34, Applicant's amendments with regard to claims 1, 11, 13, 15, 18-20, and 28-34 have been acknowledged. As such the rejections of claims 1, 11, 13, 15, 18-20, and 28-34 are withdrawn.

7. Referring to the 35 USC 112 second paragraph rejections of claims 11-14, Applicant's amendment is acknowledged. As such, the 35 USC 112 second paragraph rejections of claims 11-14 are withdrawn.

8. Referring to the 35 USC 112 second paragraph rejections of claims 15-21, 23, 25, and 28-34, Applicant's amendment of the claims to overcome the lack of antecedent basis is acknowledged. Referring to claims 29 and 30, Applicants have persuasively pointed out the antecedent basis for the term "the filtering step" in claim 28. As such, the 35 USC 112 second paragraph rejections of claims 15-21, 23, 25, and 28-34 are withdrawn. However, Applicant's amendment of claim 1 now raises new 35 USC 112 second paragraph issues.

9. Referring to the 35 USC 112 second paragraph rejection of claim 5, Applicant argues that the terms "substantially all" is defined in the specification, specifically in para. 40, stating "less than exhaustive testing at 10-50 percent levels". However, the Examiner respectfully disagrees. The Examiner would like to direct the Applicant's attention to para. 40 that clearly states "Logical levels of testing documents in the superset include at least 10, 20, 30, 40, or 50 percent of the documents in the superset", and not "10-50 percent levels" as Applicant states. Examiner submits that since the specification fails to **clearly define** guidelines for the terms "substantially all", the 35 USC 112 second paragraph rejection of claim 5 is maintained.

10. Referring to the 35 USC 112 second paragraph rejections of claims 6-9 and 27, Applicant argues that the phrase “substantially without user intervention” provides the greatest clarity and precision that can be provided to capture the sense that the user sets the process in motion and does not have to do much, if anything, for the partitioning, categorizing, and calculating steps to proceed. However the Examiner respectfully submits that the user not having to do “much” is not an adequate guideline for the terms “substantially without user intervention”. Furthermore, although the manual for the CATEGORIZER is part of the record in this application because it is part of the provisional application that is incorporated by reference, there is no reference to the manual for the CATEGORIZER in the instant specification. As such, the 35 USC 112 second paragraph rejections of claims 6-9 and 27 are maintained.

Drawings

11. The drawings are objected to because referring to Figures 5A-B, the figures do not illustrate clearly what the elements of the figures are supposed to indicate. For example, the figures contain depictions of various shapes such as triangles and circles, but do not provide a legend that illustrates what the shapes signify.

12. The drawings are objected to under 37 CFR 1.83(a) because they fail to show by way of element numbers or otherwise how the neighborhoods to the test documents are

dense or less dense, much less indicate what parts of the figures signify the test documents described on page 14 of the specification.

Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

In addition to Replacement Sheets containing the corrected drawing figure(s), applicant is required to submit a marked-up copy of each Replacement Sheet including annotations indicating the changes made to the previous version. The marked-up copy must be clearly labeled as "Annotated Marked-up Drawings" and must be presented in

the amendment or remarks section that explains the change(s) to the drawings. See 37 CFR 1.121(d). Failure to timely submit the proposed drawing and marked-up copy will result in the abandonment of the application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

13. Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 22 recite the limitation "the automatic category assignments" in the third and fourth paragraphs of the claims. There is insufficient antecedent basis for the limitation in the claims.

The term "substantially" in claims 5-9 and 27 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is therefore unclear as how many documents from the superset have been assigned to the test set. The term "substantially" is often used in conjuncture with another term to describe a particular characteristic of the claimed invention. It is a broad term. In re

Art Unit: 2163

Nehrenberg, 280 F 2d 161, 126 USPQ 383 (CCPA 1960). The court held that the limitation "to substantially increase the efficiency of the compound as a copper extractant" was definite in view of the general guidelines contained in the specification and the rest of the claim. In re Mattison 509 F .2d 563, 184 USPQ 484 (CCPA 1975). Examiner asserts that the specification fails to clearly provide guidelines for the term 'substantially'.

Due to the 35 USC § 112 rejections, the claims have been treated on their merits as best understood by the examiner.

Allowable Subject Matter

14. Claims 1-34 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

15. The following is an examiner's statement of reasons for allowance:

Referring to claim 1, Becker teaches a computer assisted method of auditing a superset of training data, the superset comprising examples of documents having one or more category assignments, the method including partitioning the superset into at least two disjoint sets, including a test set and a training set, wherein the test set includes one or more test documents and the training set includes examples of documents belonging to at least two categories, categorizing the test documents using the training set, calculating a metric of confidence based on results of the categorizing step, and reporting the test documents and category assignments.

Referring to claim 1, Masand teaches reporting documents and category assignments that are suspicious and that appear to be missing based on a metric of confidence.

Referring to claim 1, Prager teaches automatically categorizing documents, calculating a metric of confidence based on results of the categorizing step and the category assignments for the test documents, and reporting the test documents and category assignments, and reporting the test documents and preexisting category assignments that are suspicious, based on the metric of confidence.

Neither, Becker taken either alone or in obvious combination disclose all the claimed features of applicant's instant invention, specifically including: comparing the automatic category assignments for the test documents to the preexisting category assignments and reporting the automatic category assignments that appear to be missing from the test documents, based on the metric of confidence.

Also, there is no motivation to combine Masand and Prager to meet these limitations. It is for these reasons that applicant's invention defines over the prior art of record.

Claims 2-21 depend from claim 1 and are therefore also allowable.

16. Referring to claim 22, Masand discloses a computer assisted method of auditing a superset of training data, the superset comprising examples of documents having one or more category assignments, the method including determining k nearest neighbors of the documents in the superset, categorizing the documents based on the k nearest

neighbors into a plurality of categories, calculating a metric of confidence based on results of the categorizing step and the category assignments for the documents, and reporting the documents and category assignments that are suspicious, based on the metric of confidence.

Referring to claim 22, Becker teaches a test subset partitioned from a superset.

Referring to claim 22, Prager teaches automatically categorizing documents into a plurality of categories, and reporting the test documents and preexisting category assignments that are suspicious, based on the metric of confidence.

Neither, Masand taken either alone or in obvious combination disclose all the claimed features of applicant's instant invention, specifically including: determining k nearest neighbors of the documents in a test subset automatically partitioned from the superset, comparing the automatic category assignments for the documents to the preexisting category assignments and reporting the automatic category assignments that appear to be missing from the documents in the test subset, based on the metric of confidence.

Also, there is no motivation to combine Becker and Prager to meet these limitations. It is for these reasons that applicant's invention defines over the prior art of record.

Claims 23-34 depend from claim 22 and are therefore also allowable.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl M Fernandes who can be reached on (571) 272-4018. The examiner can normally be reached on 9:00 am - 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Safet Metjahic can be reached on (571) 272-4023. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CMF
August 19, 2005



UYEN LE
PRIMARY EXAMINER